

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,) CIVIL NO. 91-00137 DAE-KSC
)
 Plaintiff,)
)
 vs.)
)
 STATE OF HAWAII, et. al.,)
)
 Defendants.)
 _____)

ORDER ADOPTING AND APPROVING
ELEVENTH REPORT AND RECOMMENDATION

A hearing on the Special Master's Eleventh Report and Recommendation filed on February 10, 2006 ("Eleventh Report") was held on March 23, 2006. United States Department of Justice attorneys Judith Preston and Verlin Deerinwater and Assistant United States Attorney Harry Yee appeared on behalf of Plaintiff United States of America ("United States"). Attorney General Mark Bennett, Deputy Attorney General Ann Andreas and Special Deputy Attorney General Paul AuCoin appeared on behalf of Defendants State of Hawaii, Linda

Lingle, Chiyome Fukino, Michelle Hill and William Elliott ("Defendants"). Also present was Kris McLoughlin, the court appointed Special Monitor.

After carefully reviewing the Eleventh Report and the written responses and supplemental responses filed by the parties on February 21, and March 10, 2006, respectively, and considering the arguments of counsel presented at the hearing, the Court approves and adopts the Eleventh Report.

The Court denies the United States' request for the imposition of sanctions against Defendants based on the findings presented by the Special Master in the Eleventh Report.

In pertinent part, the Joint Stipulation and Order Regarding Plan for Community Mental Health Services filed on October 25, 2005 ("Joint Stipulation"), provides that the deadline for Defendants' achieving substantial compliance with the Plan for Community Mental Health Services ("Community Plan") is June 30,

2006. The Joint Stipulation also requires, in pertinent part, that Defendants put forth their "reasonable best efforts" to achieve compliance with the Community Plan and all previously entered court orders related to the Community Plan.

In the Eleventh Report, the Special Master found that Defendants have failed to make meaningful progress to achieve substantial compliance in certain critical areas of the Community Plan and that Defendants remain far from achieving substantial compliance with the Community Plan. Defendants acknowledge that they are behind schedule and that there is much more work to be done.

Because the Court has a serious concern that Defendants are not putting forth their reasonable best efforts to achieve substantial compliance with the Community Plan by June 30, 2006, the Court directs counsel for the parties to promptly meet and confer with the Special Master for the purpose of identifying and agreeing on benchmarks with an April 30, 2006

deadline in a limited number of subject areas of the Community Plan which would prove that the Defendants are putting forth their reasonable best efforts to achieve substantial compliance with the Community Plan by June 30, 2006. Thereafter, the Special Master, with the assistance of the court appointed Special Monitor, shall make findings and report to the Court whether or not the Defendants have met the identified benchmarks by the April 30, 2006 deadline and/or are putting forth their reasonable best efforts to achieve substantial compliance with the Community Plan. If the parties are unable to reach agreement, the Special Master shall identify the benchmarks for the parties. In the event Defendants fail to meet the aforesaid benchmarks, the Court will entertain a motion filed by the United States for the imposition of sanctions against Defendants based on Defendants' failure to put forth their reasonable best efforts to achieve substantial

compliance with the Community Plan and all previously entered court order related to the Community Plan.

IT IS SO ORDERED.

Dated: Honolulu, Hawaii, March 24, 2006.





David Alan Ezra
United States District Judge

United States of America vs. State of Hawaii, et al.,
Civil No. 91-00137 DAE-KSC; ORDER ADOPTING AND
APPROVING ELEVENTH REPORT AND RECOMMENDATION